

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2506

PETITION OF EAST COAST LANDSCAPE, INC.

OPINION OF THE BOARD

(Hearing Dates: October 9, 2002, November 12, 2002)
(Effective Date of Opinion: March 13, 2003)

Case No. S-2506 is an application for a special exception pursuant to Section 59-G-2.30.00 (Landscape Contractor) of the Zoning Ordinance to permit the operation of a landscape contractor on the northern 5.86-acre section of the subject property. The petitioner proposes to construct three, 35 foot tall buildings: (1) an 80' x 50' office, (2) an 80' x 60' storage building and (3) an 80' x 40' storage building. The petitioner will operate 7:00 a.m. to 7:00 p.m. Monday through Saturday with a maximum of eighteen employees and fourteen business vehicles and equipment.

Pursuant to the authority in Section 59-A-4.125 of the Montgomery County Code, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing on the application. The Hearing Examiner convened a hearing on October 9, 2002. The hearing was continued to November 12, 2002, and the record in the case closed on December 18, 2002. On January 13, 2002, the Hearing Examiner issued a written Report and Recommendation for approval of the special exception.

The subject property is Lot P075, Spencerville Knolls Subdivision, located at 2000 Spencerville Road, Spencerville, Maryland, in the RE-1 and Rural Cluster Zones.

Decision of the Board: Special exception granted, subject
to conditions enumerated below.

At its Worksession on February 12, 2003, the Board of Appeals voted to adopt the Hearing Examiner's Report and Recommendation, and grant the special exception subject to the following conditions:

1. Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.

2. The number of employees on-site is limited to nine (9).

3. The use is limited to seven (7) business vehicles and equipment consisting of the following:

- a. Three (3) stake body trucks;
- b. Two (2) pick-ups;
- c. One (1) skid loader, and
- d. One (1) tractor.

4. The hours of operation are 7 a.m. to 7 p.m., Monday through Saturday. Landscaping crews must leave for work sites before 8:30 a.m.

5. Deliveries are only permitted between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. A maximum of five (5) landscaping crew members may remain on the site to unload the deliveries.

6. A modification of this special exception shall be required prior to any change in ownership of the area identified on the Site Development Plan [Exhibit No. 27(a)] as "proposed Parcel B", to determine any adverse effects upon Parcel B relating to the use.

7. The special exception use shall be limited to the area outside of the Upper Paint Branch Special Protection Area and the existing driveway shall remain as shown on the site development plan, as revised in October, 2002 [Exhibit No. 27(a)].

8. The Petitioner shall comply with the conditions of approval of the preliminary forest conservation plan (FCP) including:

- a. The Petitioner shall place a Category I conservation easement over the existing forest where understory will be replanted and over required afforestation areas.
- b. Limits of disturbance, including any for stormwater management facilities, are to be located outside of the conservation easement.

- c. The Petitioner must submit a revised final forest conservation plan (FCP) as part of a preliminary subdivision plan or prior to release of sediment and erosion control permits, as appropriate. Revisions to the FCP include, but are not limited to, the following:
1. Species, sizes, and numbers of trees and shrubs for forest understory plantings to include trees that are 4' to 6' in height and shrubs of 18" to 24" in height.
 2. Include measures to control regrowth of Ailanthus and mulberry.
 3. For afforestation area, replace sweet gum with another species such as black gum or oak.
9. The Petitioner shall comply with Department of Permitting Services regulations for stormwater management and sediment erosion control.
10. The Petitioner shall install an opaque screening fence on the western property line in the vicinity of the adjacent residence as shown on the revised site plan [Exhibit No. 27(a)]. The details of the fence shall be shown as part of the final forest conservation plan and shall include measures to avoid damage to existing trees within the conservation easement.
11. If the Sign Review Board approves a variance, the Petitioner shall return to the Board of Appeals and request a modification to the special exception.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donna L. Barron, Vice Chairman in agreement and Donald H. Spence, Jr., Chairman, not participating, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of March, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.